IN THE HIGH COURT OF DELHI

Crl.M.(M) No.1981/2003

M/s.Bharat Nidhi Ltd. ..... Petitioner
! through: Mr.Krishendu Datta, Adv.

VERSUS

$ Registrar of Companies ..... Respondent
^ through : Mr.Suresh Kait, Adv.

% DATE OF DECISION: 12.09.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**

1. A short point arises for consideration. Whether on the allegations made in the complaint an actionable cause has been disclosed?

2. Complaint has been filed under Section 205-A(8) of the Companies Act 1956 as it existed in the year 1988, the year in which the complaint was filed.

3. Gravement of the allegation is as averred in para 3 of the complaint. The same reads as under:-

> "3. Though the default of the Provisions of Section 205-A came to the notice during the course of inspection under Section 209-A by an officer of the Company Law Board, Department of Company Affairs. It was observed during the

> course of inspection that the company had declared dividend but did not transfer the amount of dividend to Special Dividend Account in respect of those dividends/warrants which had been posted within the stipulated time i.e. 42 days but had not been encashed due to some reason or the other. Thus by not transferring the amount pertaining to such dividends/warrants to a special account the company has committed default of the aforesaid provisions of the Act. A show cause notice for this non-compliance was issued to the company on 7.7.84 (Annexed).

4. It is apparent, a fact not disputed by learned counsel for the respondent, that the case of the prosecution against the accused persons is of not transferring the amount of dividend to Special Dividend Account.

5. At the relevant point of time requirement of law pertaining to transfer of amount of dividend to Unpaid Dividend Account was as stipulated in sub-section (1) of Section 205-A of the Companies Act 1956. The same read as under:-

> “205-A (1) Where, after the commencement of the Companies (Amendment) Act, 1974, a dividend has been declared by a company but has not been paid, or the warrant in respect thereof has not been posted, within forty-two days from the date of the declaration to any shareholder entitled to the payment of the dividend, the company shall, within seven days from the date of expiry of the said period of forty-two days, transfer the total amount of dividend which remains unpaid or in relation to which no dividend warrant has been posted within the said period of forty-two days, to a special account to be opened by the company in that behalf in any scheduled bank to be called 'Unpaid Dividend Account of ..... Company Limited/Company (Private) Limited'.”

6. It would be relevant to note that with effect from 15.6.1998 by the Companies (Amendment) Act 1988 legal

provision was amended to read as under:-

> “205A.(1) Where, after the commencement of the Companies (Amendment) Act, 1974, a dividend has been declared by a company but has not been paid, or claimed, within forty-two days from the date of the declaration, to any shareholder entitled to the payment of the dividend, the company shall, within seven days from the date of expiry of the said period of forty-two days, transfer the total amount of dividend which remains unpaid [or unclaimed] within the said period of forty-two days, to a special account to be opened by the company in that behalf in any scheduled bank, to be called 'Unpaid Dividend Account of ..... Company Limited/Company (Private) Limited'.”

7. The issue pertaining to interpretation of Section 205-A of the Companies Act is no longer res integra.

8. Decision of the Supreme Court reported as 1970(1) SCC 437 *H.P.Gupta vs. Hiralal* has concluded the issue. It has been held that dividend is paid either when it is paid in cash or when a cheque or a warrant is sent through post at the registered address of the shareholder who is entitled to payment thereof.

9. Perusal of Section 205-A(1) of the Companies Act as it existed prior to the amendment on 15.6.1988 reveals that warrant in respect of a dividend has to be posted to the shareholder within 42 days from the date of declaration of dividend.

10. The requirement of transfer of the Unpaid Dividend Account was only when either dividend warrant was not posted within 42 days to the shareholder or was not otherwise tendered.

11. Warrants which may be not encashed and amount continuing to be retained by the company was a serious lacuna which stands addressed by the amendment incorporated on 15.6.1988.

12. The words 'or the warrant in respect thereof has not been posted' have been replaced by the words 'or claimed'.

13. The effect of the amendment is that wherever dividend remains unpaid or unclaimed within 42 days from the date of declaration of the dividend then alone the said amount has to be transferred to the Unpaid Dividend Account. The amendment is not retrospective.

14. From a perusal of the complaint, (refer para 4), it is apparent that the complaint relates to the balance-sheet of the company as of 31.3.1981.

15. The petition is accordingly allowed. The impugned complaint and the order summoning the petitioner to face trial are quashed.

16. No costs.

September 12, 2007 **PRADEEP NANDRAJOG, J.**
dk